In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 322

JOSEPH EUGENE BAXTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals was entered on May 17, 1966. The petition for a writ of certiorari, filed on July 7, 1966, is admittedly out of time under Rule 22(2) of this Court. Petitioner has offered no adequate excuse for the delay since petitioner, who must have been aware of the condition of his former counsel, could have retained his present counsel before the expiration of the time for the filing of a petition for certiorari.

In any event, there is no occasion for further review of this case. The sole issue raised is the validity of petitioner's arrest and the search of his automobile and trailer without a warrant.

The evidence at a hearing on a motion to suppress showed that on March 3, 1964, at about 9:00 p.m., petitioner and two others were driving a car pulling a large rental trailer on U.S. Highway 42. Officer Miller, a Kentucky state trooper, seeing that the car was having difficulty, pulled up to see if he could be of assistance to the driver (App. 15a-17a). Petitioner alighted from the car, told the officer he had a flat tire, and asked if the officer could call someone for help (App. 16a, 17a, 35a-36a). The trailer was enclosed on four sides, covered by a tarpaulin, but open on top (App. 18a, 43a). The officer detected a very strong odor of whiskey mash and saw several large steel drums and furniture in the trailer (App. 18a-19a). The officer was familiar with the whiskey mash smell since he had previously aided in the discovery and destruction of moonshine stills (App. 27a). When the officer asked petitioner what he was hauling in the trailer, petitioner replied that he was moving furniture and calf feed (App. 19a). The officer was skeptical and asked petitioner to show it to him. When petitioner threw the tarpaulin back, the officer "could see the contents of the barrels, the barrels, and also see the flake stand in the trailer with the copper coil in it" (App. 22a-23a, 27a-28a).

Officer Miller, who testified that he did not arrest petitioner (App. 22a), then put in calls for a man to fix the tire and for Reimer, a federal agent for the

Alcoholic Tax Unit (App. 20a). After the tire was replaced, officer Miller told petitioner that he would be detained for a few minutes (App. 28a-29a). Agent Reimer appeared a few minutes later. He recognized the odor of moonshine whiskey mash, saw the distillery equipment and mash on the trailer and sugar in the car, and noticed that there were no signs indicating that the vehicles had been on registered distillery premises (App. 38a, 40a-43a). Reimer informed petitioner that he was placing him under arrest for violation of the Internal Revenue laws (App. 24a-25a). Subsequently, Reimer confiscated the contents of the trailer (App. 39a).

Petitioner argues that Miller's detention of petitioner until Reimer arrived constituted an arrest, and that this arrest was invalid because Miller did not announce the basis for arrest. Petitioner does not argue that there was no probable cause for Miller to detain him; the invalidity is alleged to have resulted from the fact that Miller stated no formal charge. But Miller had a right to detain and search the movable vehicle which he reasonably believed to be carrying contraband. *Brinegar* v. *United States*, 338 U.S. 160; *Carroll* v. *United States*, 267 U.S. 132. Since petitioner clearly knew that the cause of his detention was a suspected violation of the Internal Revenue laws, the Kentucky statute (Ky. Rev. Stat., Tit. XL, § 431.025(1) (1962)) was complied with during Miller's detention. Under the Kentucky decisions cited in the opinion (Pet. App. 7a; see also discussion at Pet. 9-10), a statement by the arresting officer is unnecessary when the party arrested obviously knows why

he is detained. Moreover, Miller's detention and Reimer's formal arrest of petitioner really amounted to a single continuous course of conduct, and there is no reason to separate the process into its components.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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